

E-Mail Request for Emergency Relief

1. Case Number: 04 -cv- 1199 -SLR

2. Check the box that applies:

- ☒ Requesting a teleconference with the parties and the court
☐ Requesting an in-person conference with the parties and the court
☐ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

Defendants request that the Court order SRI to produce Phillip Porras, one of two named inventors, for deposition in January 2006. On Dec. 16, 2005, Defendants noticed Mr. Porras' deposition for January 11-12. SRI also designated Mr. Porras for 13 different 30(b)(6) topics. SRI refuses to produce Mr. Porras until Feb. 21, 6 weeks later than Defendants' request, and approximately two weeks before the March 10 close of fact discovery. SRI also refuses to produce the other inventor, Mr. Valdes, prior to late Feb. SRI's refusal to proceed with inventor depositions until the end of fact discovery severely limits Defendants' ability to do follow-up fact discovery and prepare expert reports due March 17, and prohibits Defendants from taking inventor testimony prior to the Feb. 17 exchange of binding claim constructions. By contrast, SRI has already taken depositions of both Defendants. SRI states that two of their counsel are unavailable. However, seven different attorneys have represented SRI. Defendants will be severely prejudiced by SRI's delay of critical inventor depositions.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: K. Prescott; J. Horvath

5. Response of opposing counsel to this request:

SRI admitted Mr. Porras is available on January 19, 20, 23, 25 and 27. Two of SRI's seven attorneys have a trial from January 18-27, and a Markman hearing through Feb. 7. SRI refuses to produce Mr. Porras for deposition until Feb. 21.

6. Name of local counsel making this request: M. Matterer

7. Today's Date: January 6, 2006

For court use only:

The court declines to get involved in this scheduling dispute at this juncture. Defendants can make another application for relief if the later scheduled depositions lead to follow up discovery that cannot be accommodated by plaintiffs and the court's schedule in place.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 04 -cv- 1199 -SLR
2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

This is a scheduling dispute that does not warrant a request for emergency relief. Although SRI has made 4 witnesses available for deposition on 22 topics in Jan., it is only able to make Mr. Porras available on Feb. 9 and 10. This is due to SRI's lead trial counsel's attendance at an ITC trial and Markman hearing in Jan. and early Feb. As Defendants recognize, Mr. Porras is a very important fact and 30(b)(6) witness, and for that reason SRI wants one of its 2 chief lawyers to prepare and defend him. The Defendant's will not be prejudiced by this short delay of a few weeks. Their claims of prejudice amount to little more than speculation about follow up discovery that will likely never be needed, and overemphasis on the importance of inventor testimony to claim construction, which is marginally relevant at best. Moreover, to alleviate such concerns, SRI has offered and is willing to delay the exchange of claim construction statements and expert reports, all of which can be done without disturbing the Court's Hearing Schedule.

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3. Name of local counsel submitting this response: John F. Horvath
4. Today's Date: Jan. 7, 2006
